REGISTER OF CLASSIFICATION DECISIONS

Date of entry in Register:	04 October 2004
Name of applicant/court:	MRC Distributors Limited
Applicant to the Labelling Body:	Not Applicable
Title of Publication:	Buttman Volume 5, No.1
Other Known Title(s):	Buttman Vol. 5, No.1
Director(s):	Not Applicable
Producer(s):	Not Applicable
Publisher:	E.A. Productions
Editor(s):	John Stagliano
Format:	Magazine
Country of Origin:	USA
Language(s):	English

● ●

Components of film originally examined: Not Applicable.

Feature: Running Time:

Trailers: Running Time:

Total Running Time:

Excision/Alteration: Not Applicable.

Reason(s) for Excision:

Not Applicable.

Classification Decision:

Objectionable.

Display Conditions:

Not Applicable.

Descriptive Note:

Not Applicable.

● ●

Direction to issue a label has been given on: Not Applicable.

● ●

SUMMARY OF REASONS FOR DECISION:

The Board made a majority decision ("objectionable") and a minority or dissenting decision ("objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years"). The reasons are set out below.

Majority Decision

Section 3(1) of Films, Videos, and Publications Classification Act 1993 (the Act)

Pursuant to section 3(1) of the Act, the majority of Board members (the Board) find that each of the magazines passes through the Section 3(1) "*gateway*" of "*matters such as sex*" in that each "*describes depicts, expresses or otherwise deals with matters of sex*". The Board must then decide if matters of sex are dealt with in such a manner that the unrestricted availability of the publication is likely to be "*injurious to the public good*".

The Board accepts the Classification Office submission that:

> "*The magazines explicitly depict and describe sexual activity. They generally emphasise women's anuses, anal intercourse and other anal related sexual activity. Each magazine includes numerous close-up photographs, showing women's splayed and gaping anuses following penetration. Other sexual activity depicted or described includes fellatio, cunnilingus, penetration of the vagina and anus by dildos and other objects such as anal beads, vaginal intercourse, double penetration (simultaneous penetration of the vagina and anus by two penises) and ejaculation onto the bodies and faces of women*".

Section 3(1) requires the "*gateway*" matter of sex to be either "*described, depicted, or expressed or otherwise dealt with*". The Board finds that there are numerous depictions and descriptions of matters of sex in each of the magazines, which are portrayed with such explicitness, in such quantity and in such a manner, as are likely to be "*injurious to the public good*".

Section 3(2)

As the Board finds the threshold in section 3(1) of the Act has been met, it must then consider whether the activities in sections 3(2)(a) to (f) of the Act exist in the publication. If such activities are found to exist in the publications then the Board must then consider whether the publication "*promotes or supports or tends to promote or support*" those activities. The phrases "*promotes or supports or tends to promote or support*" are not defined in the Act.

The Board considered in particular section 3(2)(d) which states:

> *(d) The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct*

In Volume 4 No. 2 at page 105 there is a full page cartoon of a woman cupping one breast in her hand, squatting, with love balls protruding rectally, splaying her labia to expose her urethra and vagina, and urinating. The cartoon character has a provocative look on her face, showing enjoyment. The cartoon is an advertisement and is a promotion to purchase prints of Rikky Carralero's erotic art.

Because of the stylised nature of the cartoon, and in the absence of any text to promote the use of urine in association with sexual conduct, the Board finds that the cartoon does not "*promote or support or tend to promote or support*" the use of urine in association with sexual conduct. The urination is also a one-off depiction in the magazines.

The Board therefore does not find section 3(2) of the Act applies to any of the magazines under review.

Section 3(3)

Having found that section 3(2) of the Act does not apply, the Board is then required to consider section 3(3) of the Act.

<u>Section 3(3)(a)(iii)</u>

With respect to section 3(3)(a)(iii) of the Act, the Board finds that there is an overwhelming emphasis on women's buttocks which are often spread by hands that are male, women's genitals, and anuses, some of which are viewed internally with the use of medical equipment. Such portrayals are a prominent feature in each of the magazines.

The Board finds that the manner and frequency of splayed anuses lowers the dignity of the models. The displays of women's anuses and genitals, in the manner they are displayed in each magazine, could be seen as the last frontier of exposure, by for instance disclosing inside the body for sexual titillation. The photographs, in the Board's view, do dehumanise the models by objectifying the women, for the pleasure of men with an interest in anal sex, and with voyeuristic predilections. The exposing of

anuses with such emphasis, and the use of inserted objects brings the models into dishonour or contempt. It also demeans the women by lowering their dignity.

The Board finds that a number of photographs in each of the magazines describe, depict or otherwise deal with sexual conduct of a "*degrading, dehumanising or demeaning*" nature, pursuant to section 3(3)(a)(iii) of the Act.

Specific examples of photographs which degrade, dehumanise or demean the models include in "*Buttman Volume 4 Number 3*" at page 38 a woman is shown expelling ping-pong balls from her anus and there are a number of close-up shots of various stages of ejection. On page 40 of the same magazine there are several pictures of a large dildo being inserted into an anus. On pages 41 and 42 there is a medical instrument used to allow a view inside the anal passage.

In "*Buttman Volume 5 Number 1*" at page 13 it shows ejaculate being collected in a glass, which is then held to a woman's mouth and the liquid is shown as being poured into her mouth. On pages 7 and 8 there are pictures which portray anal beads being sucked after anal insertion, and it features a woman performing fellatio on a penis taken from another woman's anus.

The Board finds that the text and cartoons reinforce the visual content of the magazines. In "*Buttman Volume 4 Number 3*" at page 113 a cartoon shows a woman with ejaculate dripping over her face and breasts with the words "*sometimes a good cum drenching is the only way to go*". A reader's letter in "*Buttman Volume 4 Number 2*" at page 5 speaks of a woman "*going out to suck a dildo that's been up a blonde's arse and let herself be gang banged*". The reader suggests other ways the woman could be further "*abused*".

<u>Section 3(3)(a)(iii) and Section 3(3)(c)</u>

The Board has to consider the "*extent and degree to which and the manner in which*" the publication *"describes, depicts or otherwise deals*" with *"sexual conduct of a degrading dehumanising or demeaning nature and the manner in which"* in section 3(3)(a)(iii) of the Act and the "*extent and degree to which it degrades and dehumanises or demeans*" a person pursuant to section 3(3)(c).

The Board finds there is a range of explicitness and a high degree of exposure of bodily orifices in each of the magazines. The range is from scantily clothed women through to graphic representations of a splayed anus using instruments. The more extreme shots objectify the body parts. In each magazine the Board found a number of images or series of images which were of such "*extent and degree*" or portrayed in such an explicit manner as to be "*objectionable"*.

It is the Board's view that these photographs would be *"objectionable"* to the majority of people in New Zealand because of the extent and degree of the explicit nature of the photographs. A minority of people with an interest in viewing depictions of anal and fixated sexual activity would find the photographs both acceptable and inoffensive and probably titillating.

<u>Section 3(3)(e)</u>

In respect to section 3(3)(e) of the Act, the Board has considered whether women as a class are represented directly or by implication as inherently inferior to men as a class and accepts the submission from MRC "*It is also difficult to see how the portrayals can be degrading, dehumanising or demeaning to women in general. This argument*

perpetrates the fallacy that these women are representative of women generally as a class and is the type of argument that has been rejected by the High Court in the Everard and Gordon and Gotch cases".

Section 3(4)

The next section of the Act the Board must consider is section 3(4).

Section 3(4)(a)

The Board finds the dominant effect of the "*Buttman*" magazines is multiple depictions of heterosexual activity including anal or oral sex, double penetration, use of sexual devices including dildos and beads and ping pong balls.

The explicit nature of some of the photographs in each magazine are likely to be *"objectionable"* to many New Zealanders.

Section 3(4)(b)

In respect to section 3(4)(b) of the Act, the impact of the medium is high definition photography with clear, brightly lit pictures. As with any magazine multiple viewings of the same still shot are possible.

Section 3(4)(c)

In respect of section 3(4)(c) of the Act, there is likely to be scant merit, value or importance from a literary, artistic, social, cultural, educational, or scientific purpose to the majority of New Zealanders.

Section 3(4)(d)

Pursuant to section 3(4)(d) of the Act, the publication is intended for a minority, predominantly male, viewers with an interest in anal heterosexual activity.

Section 3(4)(e)

The purpose of the publication is for sexual arousal and titillation pursuant to section 3(4)(e) of the Act.

Section 3(4)(f)

Pursuant to section 3(4)(f) of the Act, other relevant circumstances include that the magazines depict unsafe sex, in that there are few condoms used. It also promotes potential health hazards with the interchange of bodily fluids, the drinking of bodily fluids, and the licking of anuses, and items inserted in other people's anuses.

The New Zealand Bill of Rights Act 1990

The Board finds that the decision it has made is the least restrictive available to it, in accordance with the considerations it must have regard to under the various sections of the Act and the New Zealand Bill of Rights Act 1990.

Minority Decision

It is the view of a minority of Board members (the dissenting members) that the classification for these magazines should be "objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years". This classification should be accompanied with appropriate packaging and warnings.

In reaching this decision the dissenting members agree with the majority decision that pursuant to section 3(1) of the Act, the publications pass through the gateway of "sex".

The dissenting members agree with the majority decision that s3(2) does not apply, and that the applicable clauses in s3(3) are: s3(3)(a)(iii) and s3(3)(c).

It has long been recognised that determining what is degrading, dehumanising and demeaning is a subjective and contentious process.

In each publication material was identified that is of particular concern. These are:

- images of gaping anuses;
- cartoon drawings of women covered in semen and other secretions;
- the use of an instrument used to see inside the anal passage ("*Buttman Volume 4*, *No. 3"*); and
- ejaculate being collected in a glass, and then held to a woman's lips ("*Buttman Volume 5*, *No. 1"*).

The images of gaping anuses is considered demeaning, particularly when the hands of others were used to splay the orifice. In our opinion they are not necessarily considered more demeaning than images of splayed labia.

The cartoon drawings are more extreme in the portrayal of degrading, or demeaning content. In some there was a hint of coercive behaviour. However the dissenting members felt that the drawings are fantasy-based and lack the impact of photographs of real people. It was acknowledged that despite their unreal nature they could set a tone for the whole publication.

The use of an instrument to see inside the anal passage is considered as unnecessarily intrusive, and results in a lowering of dignity of the woman being examined. However, the offending images are a small part of one layout.

The images of ejaculate being collected in a glass and then held to a woman's lips is considered demeaning. Concern was expressed that it was others (in this case men) who collected the ejaculate and held it to the woman's lips. This could be interpreted as coercive behaviour. However, the offending images are few in number (3 out of a total of about 20), and are comparatively small in size in the overall layout.

On average it is estimated that about 7 out of approximately 400 images per magazine are considered borderline, a percentage of less than 2%.

The dissenting members felt that the material is degrading, dehumanising and demeaning to the extent that most sexually explicit material degrades, dehumanises and demeans people.

That material is considered to be degrading, dehumanising and demeaning is not sufficient grounds for it to be considered objectionable. It must also be injurious to the public good, and that threat needs to be sufficiently real to be discernable or actual.

Overall, the dissenting members consider that the material contained in the publications is similar to much that has been classified as acceptable to those 18 years of age or over.

Although the dissenting members agree that the content of the publications are to some extent demeaning, degrading and dehumanising, we felt that that is probably true of most sexually explicit material.

Some images in all publications approach the bounds of acceptability, but the amount of this material is seen as a small percentage of each publication.

The dissenting members believe that society accepts that people over the age of 18 are sufficiently mature to understand the nature and limitations of this material.

OFLC No: 401476